

SUPREME COURT  
OF THE  
STATE OF CONNECTICUT

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S.C. 19832  
S.C. 19833

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DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, *ET AL.*

V.

BUSHMASTER FIREARMS INTERNATIONAL, LLC, *ET AL.*

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BRIEF *AMICUS CURIAE* OF GUN OWNERS OF AMERICA, INC., GUN OWNERS  
FOUNDATION, UNITED STATES JUSTICE FOUNDATION, THE HELLER  
FOUNDATION, AND CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND  
IN SUPPORT OF DEFENDANTS-APPELLEES

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## INTEREST OF *AMICI CURIAE*

Gun Owners of America, Inc., Gun Owners Foundation, United States Justice Foundation, the Heller Foundation, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal taxation under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. Each is dedicated, *inter alia*, to the correct construction, interpretation, and application of the law.\*

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\* Pursuant to Rule of Appellate Procedure § 67-7, counsel for *amici* certify that this brief was not authored in whole or in part by counsel for any party and that no person or entity, other than the *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of the brief.

## STATEMENT OF THE CASE

Plaintiffs' brief reads like a novel. It is chock full of fanciful and grandiose language, describing the AR-15 style firearms at issue in this case as if they were weapons the likes of which the universe has never seen.<sup>1</sup> However, like many novels, these descriptions, while colorful, have little if any basis in reality. Plaintiffs' brief illustrates the views of those who may never have even laid eyes on the weapons they vilify — much less squeezed off a few rounds at the range, like millions of peaceful, law-abiding Americans regularly do.

Contrary to mischaracterizations of Plaintiffs' brief, the AR-15 rifle is not a Galactic Empire Death Star<sup>2</sup> equipped with a Romulan Cloaking Device.<sup>3</sup> Rather, it is a relatively low-tech mechanical tool, in large part unchanged since its development in the late 1950's, that is part of (but not the most recent in) a long line of steady advancements in firearms technology dating back centuries. To be sure, the AR-15 is an outstanding and quite popular firearm, but there is nothing that makes it an inherently different creature from millions of other semi-automatic rifles.

After vilifying the AR-15 (and, by association, many other semi-automatic, magazine-fed rifles like them), Plaintiffs' brief vilifies gun owners as a class. Plaintiffs' brief claims that what is no doubt the single most popular type of rifle in the country, owned by millions of peaceful, law-abiding Americans (see Def. Br. at 2), is nothing more than “an instrument of war” — a “military weapon built for mass casualty assaults.” Pl. Br. at 5, 27. Indeed, Plaintiffs' brief claims that the AR-15 is “not a ‘sporting rifle,’” but that “every detail of this machine serves the same end ... to inflict mass casualties in combat.”<sup>4</sup> *Id.* at 2. Plaintiffs'

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<sup>1</sup> Defendants somewhat more politely characterizes the tirade in the Plaintiffs' brief as “sensationalist rhetoric,” “unnecessary,” “unsupported,” “irrelevant, argumentative, and needlessly inflammatory.” Def. Br. at 4, 11.

<sup>2</sup> <http://www.starwars.com/databank/death-star>.

<sup>3</sup> [http://www.startrek.com/database\\_article/cloaking-device](http://www.startrek.com/database_article/cloaking-device).

<sup>4</sup> This outlandish claim is belied not only by the fact that millions of Americans own and use AR-15 style rifles for lawful purposes, but also ironically by the fact that many police units who responded to the Sandy Hook shooting carried AR-15 style rifles. It hardly seems necessary to recite the truism that “guns don't kill people, people kill people.”

brief further implies that gun owners, as a class, are too irresponsible and too careless to own such weapons responsibly. See, e.g., Pl. Br. at 18 n.17. In other words, Plaintiffs appear to believe that anyone who would desire to purchase an AR-15 rifle is a potential mass murderer, whose only possible purpose for owning such a weapon is to kill and maim.

## ARGUMENT

### I. PLAINTIFFS' NEGLIGENT ENTRUSTMENT CLAIM IS A THINLY VEILED REQUEST FOR THIS COURT TO BAN SEMI-AUTOMATIC FIREARMS.

Plaintiffs' negligent entrustment claim is not predicated on a legal argument. In fact, Plaintiffs' allegations have nothing in particular to do with **this** firearm manufacturer, **this** distributor, **this** dealer, or **this** purchaser. Indeed, nothing about **this** firearm sale was out of the ordinary as compared to tens of millions of other lawful, responsible sales that have come before and after it. As Defendants' Brief notes, "[a] properly pleaded negligent entrustment cause of action ... depends on an essential **factual** allegation — that **the** seller had actual or constructive knowledge that **the** person to whom it sold **the** product was not competent to use it safely." *Id.* at 1 (emphasis added). Yet it is indisputable that everyone in the chain of custody of **this** firearm did exactly what they were supposed to do, followed every law on the books, and had no way to reasonably foresee that, years later, a deranged young man would murder his mother, steal her firearms, and use them to commit further atrocities.

Rather, what Plaintiffs are really making is a policy argument — that **no** manufacturer, **no** distributor, **no** dealer, and **no** gun owner should ever be permitted to manufacture, distribute, sell, or purchase **any** AR-15 style rifle.<sup>5</sup> Plaintiffs' brief argues that **every one** of this nation's most popular rifles is inherently dangerous,<sup>6</sup> and that **all** law-abiding

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<sup>5</sup> Plaintiffs' objection is "simply because the rifle was sold at all." Def. Br. at 9.

<sup>6</sup> As discussed *infra*, the AR-15 isn't much different from most other semi-automatic rifles, many of which fire similar (or more powerful) rounds, have similar (or greater) rates of fire, and do so with the same (or greater) accuracy. See First Amended Complaint ¶ 72. If

Americans are inherently irresponsible and untrustworthy.<sup>7</sup> Plaintiffs do not argue that there was any foreseeability in **this** case about the harm caused by someone using **this** rifle, but argue that harm is always foreseeable when **any** AR-15 style rifle is sold.

In essence, Plaintiffs ask this Court to move away from any negligent entrustment claim on the basis of the individual theory of fault, and instead to create a sort of enterprise theory of liability which would “make sellers de facto insurers of their products in Connecticut.” See Def. Br. at 3. This is precisely the sort of result that the Protection of Lawful Commerce in Arms Act (“PLCAA”) was designed to prohibit. See Pl. Br. at 18-20.

Plaintiffs ask this Court to legislate policies that the Connecticut General Assembly did not authorize, and to overrule the express protections enacted by Congress both in the PLCAA<sup>8</sup> and in the creation of the NICS system.<sup>9</sup> Rather than alleging particular wrongs in this case, Plaintiffs wish to make it so that **no** one will ever again dare to sell **any** AR-15 style rifle, irrespective of how remote the chance may be that down the line some crazed lunatic might get his hands on that firearm and misuse it.

Negligent entrustment claims are not meant to create broad general rules so that no one can engage in commerce in a particular item. Such decisions are the legislature’s alone to make (and, in this case, subject to the rights of the People reflected in the Second Amendment’s protections). Negligent entrustment claims involve facts peculiar and

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*footnote 7 continued* Plaintiffs’ claim is allowed to proceed, the effect would be would to preclude the sale of many if not all semi-automatic rifles, by making such sales too risky.

<sup>7</sup> See Def. Br. at 9. The district court noted that this theory would “extend the theory of negligent entrustment to the class of nonmilitary, nonpolice civilians — the general public....” *Soto v. Bushmaster Firearms Int’l, LLC*, 2016 Conn. Super. LEXIS 2626, \*39.

<sup>8</sup> Plaintiffs claim that it should be up to a jury (“the people”) to decide whether to hold Defendants liable for Adam Lanza’s deeds (Pl. Br. at 24), ignoring the fact that Congress (the people acting through elected representatives) has already chosen to immunize gun manufacturers from lawsuits precisely like this. See Def. Br. at 25.

<sup>9</sup> In 18 U.S.C. § 922, Congress created a list of categories of prohibited firearm owners, thereby entrusting ownership of firearms (including the ones at issue here) to all those who do not fall into a prohibited category. Moreover, with the 2004 sunset of the Assault Weapons Ban of 1994, Congress made clear that Americans were once again authorized to engage in commerce in AR-15 style rifles.

particular to the specific case at bar — something which Plaintiffs have utterly failed to allege. The trial court recognized this problem, noting that “[t]he validity of [plaintiffs’] argument rests on labeling as a misuse the sale of a legal product to a population that is lawfully entitled to purchase such a product.” 2016 Conn. Super. LEXIS 2626 at \*38. See *a/so* Plaintiff’s Br. at 14.

## **II. PLAINTIFFS ATTEMPT TO VILIFY THE AR-15 FALL FLAT.**

### **A. The AR-15 Is Not “So Powerful.”**

An AR-15 rifle in its classic form fires the .223 Remington/5.56 NATO caliber cartridge. This is not a particularly powerful rifle round. On the contrary, it is actually on the small side when compared to most other rifle cartridges. Indeed, any avid shooter knows of the decades-old debate as to whether the small .223/5.56 projectile is robust enough for military use against human targets,<sup>10</sup> or whether it instead should be considered a varmint round suitable only for dispatching ground hogs and prairie dogs.<sup>11</sup> While the U.S. military continues to use the .223/5.56 platform, other countries’ militaries almost exclusively use larger caliber weapons such as the AK-47, which chamber .30 caliber or larger rounds.

The Plaintiffs claim that the AR-15 fires a bullet “traveling at 4,000 feet per second.” Pl. Br. at 2, First Amended Comp. ¶ 62. In reality, the muzzle velocity is closer to about 3,200 feet per second,<sup>12</sup> but who needs to be accurate when one can instead be sensational? The common weight of the bullet in the .223/5.56 cartridge typically is between 55 and 62 grains, resulting in a muzzle energy of approximately 1,300 “foot pounds,” give or take. *Id.*

That’s pretty anemic, compared to the most popular “sporting” cartridges in the United States today, which are not found in the AR-15 platform. For example, the ubiquitous .308 Winchester/7.62 NATO cartridge can fire a 168-grain bullet at over 2,600 feet per second,

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<sup>10</sup> Maj. A. F. Milavic, USMC (Ret.), “The Last ‘Big Lie’ Of Vietnam Kills U.S. Soldiers in Iraq,” *Soldier of Fortune*, Oct. 4, 2016, <http://goo.gl/j4NfzA>.

<sup>11</sup> See, e.g., J. P. Avery, “An Army Outgunned: Physics Demands A New Basic Combat Weapon,” *Military Review*, Jul-Aug 2012, <http://goo.gl/WCD28Y>.

<sup>12</sup> [http://www.ballistics101.com/223\\_remington.php](http://www.ballistics101.com/223_remington.php).



creating a muzzle energy of over 2,700 foot pounds — **more than twice** that of the .223/5.56. The .30-06 Springfield caliber can fire that same 168 grain bullet at 2,900 feet per second, resulting in a muzzle energy of over 3,100 foot pounds<sup>13</sup> — **nearly two and a half times** that of the .223/5.56.

Even the low-tech, blunt-nosed .30-30 Winchester — first marketed in 1895 and which over the years has killed more deer than any other round on the market<sup>14</sup> — can fire a 150-grain bullet at almost 2,400 feet per second, with a muzzle energy of almost 1,900 foot pounds<sup>15</sup> — 46 percent greater than that of the .223/5.56. In other words, even when compared to granddaddy's old deer rifle, the AR-15's cartridge is not so powerful after all.

### **B. The AR-15 Is Not “So Accurate.”**

According to Plaintiffs' brief, the AR-15 is “so accurate” that it “[does] not require careful aim” and has “vanquished the need for skilled hands or forgiving terrain.” Pl. Br. at 2, 5. Apparently, Plaintiffs' brief gives the impression that an AR-15 fires itself, although not quite around corners with radar controlled heat seeking guidance, like Sylvester Stallone's Lawgiver, “the standard sidearm issued to Judges in the fictional world of the Judge Dredd comics.”<sup>16</sup>

Plaintiffs do not explain what they mean by their assertion that the AR-15 is “so accurate.” They imply that the accuracy of the AR-15 is superior to other rifles. On the contrary, its accuracy is about the same. The AR-15 has a barrel, trigger, and sights — just like other rifles. To be sure, the AR-15 is known for its ergonomic design. And the rifle system — if set up properly — is capable of great accuracy. But that does not mean that marksmanship is unnecessary. All modern centerfire rifles are generally capable of great accuracy. Modern design, manufacturing, machining, and gunsmithing mean that firearms

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<sup>13</sup> [http://www.ballistics101.com/308\\_winchester.php](http://www.ballistics101.com/308_winchester.php).

<sup>14</sup> [http://www.ballistics101.com/30-06\\_Springfield.php](http://www.ballistics101.com/30-06_Springfield.php).

<sup>15</sup> <http://blog.cheaperthandirt.com/the-30-30-deer-rifle/>.

<sup>16</sup> [http://www.ballistics101.com/30-30\\_winchester.php](http://www.ballistics101.com/30-30_winchester.php).

are generally far more accurate than their predecessors, even when compared to those manufactured a couple decades ago. But the modern AR-15 is certainly not uniquely accurate. If a novice walked into any gun store in America and said, “sell me your most accurate rifle” — no dealer would reach for an AR-15.

The AR-15 is known for its intermediate characteristics. It is not particularly useful at long distances, nor is it particularly accurate compared to other more precision-type rifles, such as many bolt-action rifles. Although many excellent shooters are capable of using the AR-15 rifle to obtain excellent marksmanship at long distances, the AR-15 is not considered a long-distance rifle. For example, a typical .223/5.56 bullet fired from the AR-15 will drop about 65 inches at 500 yard,<sup>17</sup> not insignificantly more than the .30-06 bullet’s drop of 55 inches at the same distance.<sup>18</sup> However, beyond 500 yards, the lightweight and moderately powered .223/5.56 bullets fall off sharply, the .223 falling a whopping 692 inches (58 **feet**) at 1,000 yards — compared to 376 inches of bullet drop for the .30-06 at 1,000 yards. The huge bullet drop of the .223/5.56 round makes it far more difficult for a shooter to compensate, as most rifle scopes do not have that much elevation built into their turrets. Thus, the shooter is left with the guesswork of “holdover” — aiming at a point above the target, intending that the bullet will impact the target below. Additionally, the relatively light .223/5.56 bullet is more easily affected by wind and blown off course.

At the end of the day, rifles are not “accurate” — shooters are. Almost all modern rifles are **capable** of accuracy, but it is up to the user to fire them accurately. Accuracy is certainly not something that just happens on its own, or is inherent in an AR-15, as Plaintiffs suggest.

### **C. The AR-15 Is Not “So Destructive.”**

Plaintiffs attempt to make the AR-15’s .223/5.56 cartridge sound terrifying by stating that

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<sup>17</sup> <http://gundata.org/blog/post/223-ballistics-chart/>.

<sup>18</sup> <http://gundata.org/blog/post/30-06-ballistics-chart/>.

“rounds with a velocity exceeding 2,500 feet per second cause a shockwave to pass through the body upon impact that results in catastrophic injuries even in areas remote to the direct wound.” First Amended Complaint ¶ 61. But almost all rifle rounds travel at speeds exceeding 2,500 feet per second. Plaintiffs claim that the .223/5.56 round has “enough velocity to penetrate body armor and steel helmets.” Pl. Br. at 5. But no one wears steel helmets these days except for World War II reenactors. And as for body armor, it is generally true that .223/5.56 round can penetrate soft body armor — but so can any centerfire rifle round — in fact, such body armor is not rated to stop rifle rounds.

The penetrative abilities of the .223/5.56 round are not that impressive either. For example, in one video comparing the .30-06 to the .223/5.56, a bullet fired out of an AR-15 did not even fully penetrate a 6x6 inch pressure treated piece of lumber, while a 30-06 bullet fired out of a bolt action rifle punched a large hole through the post.<sup>19</sup>

Although Plaintiffs attempt to make the .223/5.56 round sound destructive, it’s actually on the low end of that scale as well. It is as if the Plaintiffs have asserted that Honda Accords are particularly high-powered cars because they are capable of driving 60 miles per hour — while ignoring that just about every other car on the road can also attain 60 miles per hour, and some multiples of that. As with accuracy, it is not the rifle itself which is destructive; it is the user. The same rifle that was used here to destroy lives is also used to save them.

#### **D. The AR-15 Is No More a “Feat of Human Engineering” than Are a Multitude of Firearm Advancements that Came Before It.**

Although a mere picture of a firearm like an AR-15 may strike fear into the hearts of those raised with no understanding of firearms, the AR-15’s functionality is properly viewed as simply a modest evolutionary improvement over its predecessors. Indeed, at each level in the evolutionary chain of firearms over the past two centuries, one could anticipate Plaintiffs’ same sensationalist objections being raised to each new advancement in the

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<sup>19</sup> <http://gundata.org/blog/post/30-06-ballistics-chart/>.

technology of firearms — that they “will achieve more wounds, of greater severity, in more victims, in less time, every time” (Pl. Br. at 2), and that they now have become too powerful and frightening to be owned by civilians.

One can imagine that when magazine-fed, **semi-automatic** firearms were developed over a century ago, some claimed they were unusual and frightening when compared with the bolt-action, lever-action, pump-action, and revolving-action firearms that preceded them. The famous M-1 Garand, a semi-automatic rifle with 8-round “clips” of ammunition that can be quickly loaded, became the first semi-automatic rifle to be standard issue for a nation’s army in World War II.<sup>20</sup> Consequently, U.S. troops outclassed the limited firepower of the Soviets’ fixed-magazine, bolt-action Mosin Nagants and the Germans’ fixed-magazine, bolt-action Mausers.<sup>21</sup>

When “repeating” arms became popular roughly one and one-half centuries ago, their firepower seemed incredible to some, since such weapons “gave a single man the firepower of a dozen marksmen armed with muzzle-loading muskets.”<sup>22</sup> Henry Repeating Arms Company marketed its lever-action rifles as being able to fire “sixty shots per minute.” B. Wexler, 50 Guns that Changed America: An Illustrated Guide (Skyhorse Publishing: 2015) at 65. Indeed, “[d]ue to its revolutionary design and rapid rate of fire, the Henry quickly found popularity both with the military and civilian purchasers.” *Id.* at n.19.

When the firearm cartridge itself — consisting of a bullet, powder, casing, and primer all contained in a single unit — gained a foothold in the mid- to late 1800’s, this development also greatly increased a weapon’s rate of fire over rifles that had come before it. In fact,

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<sup>20</sup> See B. Canfield, “The First Garands,” American Rifleman (Aug. 22, 2011), <http://www.americanrifleman.org/articles/2011/8/22/the-first-garands/>.

<sup>21</sup> See “M1 Garand .30 Caliber Semi-automatic Rifle: Principal Rifle of World War II,” World War 2 Headquarters, <http://worldwar2headquarters.com/HTML/weapons/american/garand.html> (“A well trained soldier could place 32 rounds per minute on target, more than twice the number of rounds that could be well aimed and fired from a bolt action rifle in one minute.”).

<sup>22</sup> <https://www.henryrifles.com/henry-history/>.

some breech-loading rifles were found to have a 250 percent faster rate of fire than muzzle-loading rifles that had preceded them, and which had required that each component (powder, wadding, shot, primer) be loaded individually. See Wexler at 56. And with muzzle-loading muskets and long rifles, we have come back full circle to the “so powerful, so accurate, and so destructive” weapons — the best of their day — owned and used by the founding generation during the era when the Second Amendment was ratified. At each step along their evolutionary chain, the same claims about lethality, rate of fire, and effectiveness could be made that Plaintiffs now make regarding the AR-15. Yet few today are clamoring to ban musket.

### CONCLUSION

For the reasons above, *Amici Curiae* pray that the superior court’s ruling granting in their entirety the Defendants’ motions to strike the amended complaint be affirmed.

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